Garnishing the Congressional Intent: Protecting Debtor Wages in Bank Accounts Under the Federal and Louisiana Wage Garnishment Exemption Statutes

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INTRODUCTION

It would be a sheer, ineffectual folly to argue that compensation is exempt until it touches the hands [of the debtor] or the bank checking account and from that instant is completely available to a creditor possessing an attachment order. If that be the case, where is the exemption?¹

Imagine two employees named Adam and John who work for the same company. Both have the same occupation, work the same amount of time, receive the same benefits, and deduct the same amount of taxes from their paychecks. At the end of each month, Adam and John receive their monthly paycheck, each totaling $1,000. This monthly payment is the only source of income for Adam and John, and both employees subsequently deposit their paychecks into a personal checking account. Both employees owe a debt of $1,000 to the same creditor.

Since both Adam and John are delinquent in their debt obligations, the creditor seeks repayment. In November, in conformity with the appropriate federal and state garnishing laws, the creditor garnishes twenty-five percent of Adam’s wages. As a result, Adam receives a check for only $750, which he deposits into his checking account.

At the same time, John receives his usual check of $1,000 and deposits it into his checking account. The balance in his checking account is $1,000, resulting solely from his November paycheck. The next day, the creditor presents the bank with a writ of garnishment for the funds in the bank account encompassing all $1,000. John argues that under the wage garnishment laws, the creditor should be entitled to only twenty-five percent or $250 of the $1,000 in his bank account. If the creditor succeeds, John will have no funds for an entire month upon which to live.

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Since the ruling in Dunlop v. First National Bank of Arizona,² some federal and state courts have ruled that wages are not exempted from garnishment once they leave the employer's possession. As a result, in the situation presented above, John would lose his entire $1,000. However, there are some state courts that have reached the opposite result. After examining their state statutes, some courts have concluded that the wage garnishment exemption should extend to wages deposited into a bank account.³

This article addresses the question whether wages should be exempted from complete garnishment after they are deposited in a financial institution based on the federal and the Louisiana statutes. The article examines the issue in two parts. Since it is necessary to contrast Louisiana's wage garnishment statute with the federal statute, Section I first examines the question of wage garnishment under the federal statute. Section I-A develops the background of the federal statute and the reasons for its enactment. Section I-B considers the case law commencing in Dunlop and continuing in Melby v. Anderson.⁴ Since the courts appear to narrowly construe Congress' intent behind the federal wage garnishment statutes, Section I-C critically analyzes and questions the outcome reached in the above cases. Finally, Section I-D offers suggestions to rectify the jurisprudential shortcomings.

After examining the federal statute, Section II of the article turns to the Louisiana statute exempting the garnishment of wages. Since Louisiana state courts have yet to confront this issue, Section II-A examines how other state courts have interpreted their own wage garnishment exemption statutes in light of the federal statute. Section II-B then closely analyzes the Louisiana statute. In order to fully answer the wage garnishment issue in Louisiana, Section II-B examines the language, history, and legislative purpose behind the state statute. Finally, Section II-C concludes by stating that Louisiana courts should broadly interpret the state statute and extend the garnishment exemption to wages deposited in bank accounts.

² 399 F. Supp. 855 (D. Ariz. 1975) (Consumer Credit Protection Act's provisions restricting wage garnishment did not apply to funds deposited in financial institutions).
⁴ 276 N.W.2d 274 (Wis. 1979) (garnishment restrictions under the CCPA did not apply to wages after wages were paid to an employee and deposited into his bank account).
I. THE FEDERAL STATUTE: RESTRICTION ON THE GARNISHMENT OF WAGES

A. Federal Statute Background

Wage garnishment has been defined as "the taking of the debtor's wages directly from the employer to satisfy the debt owed to the creditor."\(^5\) The protection of wages first developed in state statutes to allow debtors to protect portions of their wages from garnishment.\(^6\) These state statutes differed from one another, and many statutes led to devastating results for a debtor and his family as states allowed for the garnishment of a high percentage of wages.\(^7\) Congress eventually took note of the garnishment problem and on May 29, 1968, passed the Consumer Credit Protection Act (CCPA),\(^8\) which became effective on July 1, 1970.\(^9\)

The CCPA is an extensive Act currently encompassing 15 U.S.C. §§ 1601–1693. The Act was originally composed of three Subchapters but has since grown to six Subchapters, all with the purpose of regulating consumer transactions. This article will mainly focus on the sections within Subchapter II, Restrictions on Garnishment, 15 U.S.C. §§ 1671–1677.

Though there exists much legislative history behind the passing of the CCPA,\(^10\) it is quite evident that Congress was concerned with the growing number of bankruptcies and believed these increasing bankruptcies were the result of unrestricted state garnishing laws.\(^11\)

Congress unified state garnishing requirements by allowing the garnishment of twenty-five percent of disposable earnings or the amount by which a debtor's weekly disposable earnings exceeded thirty times the federal minimum wage rate, whichever amount is

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10. H.R. Rep. No. 90-1040 (1967); Rodgers, supra note 6, at 446.
11. H.R. Rep. No. 90-1040; Rodgers, supra note 6, at 446, 447.
Thus, Congress allowed for an exemption of at least seventy-five percent of a debtor's wages. The statute defines "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise and includes periodic payments pursuant to a pension or retirement program." The statute also defines "disposable earnings" as the "part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Finally, the CCPA allows states to set their own standards for wage garnishment, as long as state laws do not undermine the creditor restrictions set out in the federal statute.

B. The Federal Jurisprudence

1. Dunlop v. First National Bank of Arizona

The issue concerning the CCPA was first discussed in Dunlop v. First National Bank of Arizona. In Dunlop, the court was called upon to determine whether the CCPA's provisions restricting wage garnishments applied to funds that were deposited in financial institutions. The First National Bank of Arizona was served with writs of garnishment for certain funds deposited into bank accounts by depositors named in the writs. The Department of Labor responded by claiming that certain portions of the deposit were protected from garnishment under the provisions of 15 U.S.C. §§ 1671-1677. The court first examined the language of these statutes under Subchapter II of the CCPA, "Restrictions on Garnishment," and found that there was no reference or mention of financial institutions in these articles. The district court next compared Subchapter II to Subchapter I and Subchapter III. Subchapter I consists of articles dealing with Consumer Credit Cost Disclosure, and Subchapter III contains articles regulating Credit Reporting Agencies. While financial institutions play a role in Subchapters I and III, the court found that there "is not the slightest hint in the wording of 15 U.S.C. §§ 1671-1677 that the

17. id. at 855.
18. id.
19. id. at 856.
[S]ubchapter [II] should be applied to financial institutions.\textsuperscript{20} The court described Subchapter II as regulatory in nature, where the "statute is concerned with the regulation of the garnishment process itself and not the protection of a given fund."\textsuperscript{21} The court noted that if Congress intended to extend the restriction of wage garnishment to funds deposited in a financial institution, Congress would have specifically done so.\textsuperscript{22} Finally, the court dismissed the Department of Labor opinions in which the Department suggested that Subchapter II should apply to funds deposited in bank accounts. The court rejected the opinion on the basis that if the court were to uphold the Department's suggestion, it would be reading language and intent into the statutes that were not currently present.\textsuperscript{23} The district court, therefore, held that Congress, through the language and structure of the garnishment statute, did not intend to protect wages from garnishment after they were deposited into financial institutions.

2. Melby v. Anderson

The ruling in \textit{Dunlop} was followed and subsequently expanded in other courts and circuits. In \textit{Melby v. Anderson}\textsuperscript{24}, the creditor, Melby, attempted to collect on the debt owed by defendant Marilyn Anderson by garnishing funds deposited in Marilyn and LeRoy Anderson's joint checking account.\textsuperscript{25} The Andersons answered the complaint, claiming that the bank account consisted solely of wages and of the $469.00 in the joint checking account, seventy-five percent of the wages were protected from garnishment under federal and state statutes. The court in \textit{Melby} concluded that "it was not the intent of the Congress to protect from garnishment funds paid out as earnings after they went into the possession of an employee . . . the intent was to protect the employment relationship,"\textsuperscript{26} The \textit{Melby} court found the analysis in \textit{Dunlop} persuasive.\textsuperscript{27} However, the \textit{Melby} decision took \textit{Dunlop} a step further: "It could not be clearer that the Congress was concerned with the protection of earnings in the ordinary payroll process. There is nothing to suggest that the restrictions on garnishment were intended to apply to wages after they had been paid over to

\begin{itemize}
\item \textsuperscript{20} \textit{Id.}
\item \textsuperscript{21} \textit{Id.} at 857.
\item \textsuperscript{22} \textit{Id.}
\item \textsuperscript{23} \textit{Id.}
\item \textsuperscript{24} 276 N.W.2d 274. (Wis. 1979).
\item \textsuperscript{25} \textit{Id.} at 275.
\item \textsuperscript{26} \textit{Id.} at 276.
\item \textsuperscript{27} \textit{Id.} at 277.
\end{itemize}
the worker.” The *Dunlop* court denied the exemption when the funds were deposited in financial institutions. The *Melby* court denied exemption once the worker had obtained possession of the wages, thus decreasing the scope of the wage exemption. In addition, the court contended the deposited payroll checks were not “disposable earnings” which the congressional Act intended to protect.

The court in *Melby* also examined the defendant’s argument that there existed a difference between compensation “paid” and compensation “payable” and, thus, even after the wages were paid, the wages should still be afforded protection. The defendants cited the cases of *Philpott v. Essex County Welfare Board* and *Lawrence v. Shaw* where the Supreme Court of the United States construed the “paid” or “payable” language as to extending to a fund after the monies have been received and deposited by the recipient. The court held that the two cases were not applicable in the wage garnishment context.

According to the *Melby* court, the courts that looked at the issues in *Philpott* and *Lawrence* examined different statutes whose language and history specifically protect those benefits from creditors. The benefits protected in these two cases were “given broader protection than that afforded earnings in the garnishment proceedings under the federal Consumer Protection Act.” The court in *Melby* did not examine the Wisconsin statute because the defendants asserted their exemption based on federal law. As a result, the court based its ruling on the interpretation of the federal garnishment statutes under the CCPA.

Finally, in addition to the ruling in *Melby*, other federal and state courts have followed the *Dunlop* approach and interpreted

28. Id. at 277–78.
29. 409 U.S. 413, 93 S. Ct. 590 (1973) (extended protection from garnishment to social security benefits after the funds were deposited in a bank account).
30. 300 U.S. 245, 57 S. Ct. 443 (1937) (protected the garnishment of veterans’ compensation benefits before and after the beneficiary received them).
32. Id.
33. Id.
34. Id.
35. *See* Usery v. First National Bank of Arizona, 586 F.2d 107 (9th Cir. 1978) (though it does not cite *Dunlop*, the appellate court uses the same statutory analysis and reaches the same conclusion: Wage garnishment protection under 15 U.S.C. §§ 1671–1677 does not apply to banks); In re Lawrence, 205 B.R. 115 (E.D. Tenn. 1997) (in deciding whether the garnishment exemption could be extended to accounts receivable, the court analyzed and accepted the decisions in *Dunlop* and *Melby*).
the garnishment rules under the CCPA as not affording the debtor protection after the wages have been deposited in a bank account.

C. Interpreting the Federal Statute in a Different Light

In interpreting the wage garnishment statutes of the CCPA, courts have acknowledged the existence of the ambiguity\textsuperscript{37} and have attempted to understand Congress’ true intent regarding whether wages should be exempt once placed in a financial institution. In deciding the meaning of the garnishment statute, courts should begin where all inquiries must begin—with the language of the statute itself.\textsuperscript{38} The statutes in question, Subchapter II, do not specifically discuss the protection of wages when deposited in financial institutions.\textsuperscript{39} In addition, even some specific language within the statutes is ambiguous. The \textit{Melby} court acknowledged the existence of ambiguity in the language set forth in 15 U.S.C. § 1672 where the statute defines earnings as compensation “paid or payable for personal services.”\textsuperscript{40} The court noted that the face of the statute is ambiguous and thus gives credence to the defendant’s claim that Congress intended to restrict garnishment of funds even after the earnings were “paid” to the employee.\textsuperscript{41} Though the court later dismissed the defendant’s argument, the court clearly acknowledged ambiguity in the language of the statute. If a statutory text is ambiguous, courts should read it in light of its legislative history.\textsuperscript{42}

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36. See Edwards v. Henry, 293 N.W.2d 756 (Mich. Ct. App. 1980) (following \textit{Dunlop} and \textit{Melby}, the state court held that Subchapter II of the CCPA did not shelter from garnishment wages that were included in portions of a worker’s checking account); Frazer, Ryan, Goldberg, Keyt & Lawless v. Smith, 907 P.2d 1384 (Ariz. Ct. App. 1995) (funds lose their partially exempt status as earnings once they are deposited in a debtor’s bank account).

37. See \textit{Melby} v. Anderson, 276 N.W.2d 274, 276 (Wis. 1979).


40. See \textit{Melby}, 276 N.W.2d at 276.

41. Id.

It is in this ambiguous light that the courts neglected the congressional intent as developed in the legislative history. The Dunlop and Melby courts focused on Congress’ intent to unify the bankruptcy laws and protect the employer-employee relationship. The courts’ findings and focus on the unifying congressional intent were correct; however, the courts failed to give adequate attention to the legislative history as a whole. They took a narrow, interpretative approach and failed to examine the entire scope and legislative spirit behind the garnishment statutes. Protecting the employer-employee relationship might be one aspect of the garnishment act, but it certainly is not the only aspect. There exists legislative history on Congress’ intent of the statutes as a whole and the courts should have fully examined it.

It is clear and widely held that, when faced with a surge in the number of personal bankruptcies, Congress intended to unify the


43. See Dunlop v. First Nat’l Bank of Arizona, 399 F. Supp. 855, 856 (D. Ariz. 1975) (“The act was formulated by Congress as an attempt to cure a wide range of abuses which had surfaced over the years in the growing field of consumer credit . . . . The purpose of Subchapter II is to govern the relationship between employers and employees.”); Melby, 276 N.W. 2d at 277 (“[T]he conclusion that Title III is to be applied only to wage garnishments affecting the employer-employee relationship is almost expressly, and certainly implicitly, required by the language of Title III.”).

44. The idea of protecting the employer-employee relationship arises from the nature of wage garnishment. It is important to clarify the difference between the concept of garnishment and attachment. For this distinction see Law of Elec. Funds Trans. Systems Chapter 18.02 (January 2004):

Attachment and garnishment are legal processes established by state laws for the seizure of a debtor’s property. The laws concerning these processes vary considerably from state to state.

“Attachment” generally refers to the process by which an individual’s assets, including bank accounts, are seized for payment of a debt. If a debtor’s bank account can be identified, the entire account may be commonly attached.

“Garnishment” generally refers to a legal process served on a debtor’s employer, directing him to withhold a percentage of the debtor’s earnings over a period of time to satisfy a debt. In some jurisdictions, periodic payments pursuant to a pension or retirement plan also can be garnished.

bankruptcy laws between the states, lower the number of personal bankruptcies, protect the borrowers, protect the debtors’ employment, lower the burden on interstate commerce, and promote economic efficiency. By limiting the amount of wages that could be garnished from a debtor, Congress desired to protect not only the way by which the debtors receive income (via the employer-employee relationship), but also the debtors’ livelihoods after they receive their wages. By allowing a debtor to retain at least seventy-five percent of his income, Congress is not only protecting the employer-employee relationship, but it is also protecting the debtor individually by giving him means upon which to live, not only as an employee, but also as a consumer. The House Report to Congress even states that the bill restricting the garnishment of wages “will relieve countless debtors driven by economic desperation from plunging into bankruptcy in order to preserve their employment and insure a continued means of support for themselves and their families.”

More specifically, the force behind wage exemptions in wage statutes has long been justified by three main policies: “Legislatures have sought to encourage debtor rehabilitation, to provide minimum security for the debtor’s family, and to relieve the community of some burdens of social welfare.” Congress hoped that wage protection would allow debtors to maintain their basic needs. Before the statute was passed, wage garnishment victimized the nation’s workers and led to “job loss, personal anguish, and humiliation.” As a result of wage garnishments, the debtor “will be left not only without income to satisfy the obligation[s] for which his wages were garnished, but also without income to pay his rent or for food.” Moreover, in deciding the

46. See Rodgers, supra note 6, at 447.
48. Ronald T. Taylor, Debtor Exemptions in New Mexico, 6 Nat. Resources J. 467, 467 (1966) (citing Slatcoff v. Dezen, 76 So. 2d 792, 794 (Fla. 1954) (where the court said that the state has an interest in its exemption laws to “the end that owners of exempt property and their families shall not be reduced to absolute destitution, thus becoming a charge upon the public.”)); George L. Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289 (1950); Hollywood Credit Clothing Co. v. Jones, 117 A.2d 226 (D.C. Munic. Ct. App. 1955).
50. Moran, supra note 7, at 105 (citing 114 Cong. Rec. 1613 (1968) (remarks of Congressman Resnick)).
51. Note, Wage Garnishment under the Consumer Credit Protection Act: An Examination of the Effects on Existing State Law, 12 Wm. & Mary L. Rev. 357, 359 (1970) [hereinafter Wage Garnishment].
amount to exempt from garnishment, lawmakers had to consider whether the debtor's reduced paycheck would be enough to meet everyday living expenses and other obligations, or whether it would force him into bankruptcy and possibly make him a ward of the state.\(^\text{52}\)

It is clear that Congress intended to protect the employer-employee relationship but not in the interest of the employer. Rather, Congress intended to protect the interest of the debtor. To protect the well-being of the debtor, Congress wanted to make sure that the employee did not lose his job if his wages were garnished.\(^\text{53}\)

However, protecting the employee’s job security was not the only intent of Congress. Congress also wanted to protect the debtor's family.\(^\text{54}\) These are two distinct concepts behind the wage garnishment statute that the courts have blurred together. The courts have focused solely on the congressional intent to protect the employee’s job and have failed to acknowledge that Congress intended to provide more than job security. If Congress intended only to protect employees from losing their jobs as a result of garnishing proceedings, there would be little reason for Congress to protect as much as seventy-five percent of an employee’s wages. The legislative history,\(^\text{55}\) as well as the significant percentage of the garnishment exemption, exemplify the dual intentions behind the garnishment statutes: to protect the employee’s job security and personal well-being and to protect the employee’s family.

As a result, if Congress sought to provide the debtor with enough money and means to support himself and his family, why would Congress not intend to protect the debtor’s wages after they were given to him? It would seem that restricting the wage garnishment before the wages enter into the hands of the debtor and then allowing complete wage garnishment after the debtor gained control of his wages would defeat the whole purpose of Congress’ intent to protect debtors. Completely stripping a debtor of his wages after he receives them creates the same burdens on the

\(^{52}\) See id. at 360; see also Elizabeth Warren & Jay L. Westbrook, The Law of Debtors and Creditors 86 (4th ed. 2001) (“If a garnishing judgment creditor could seize the entire obligation owed by an employer to a judgment debtor, then the judgment debtor’s ability to survive might be seriously jeopardized. The debtor’s incentive to work would be sharply reduced, resulting in hardship to the debtor’s family or increased social costs.”).

\(^{53}\) See 15 U.S.C. § 1674(a) (2004) (No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.).

\(^{54}\) See sources cited supra note 48.

\(^{55}\) Rodgers, supra note 6, at 447 (citing H.R. Rep. No. 90-1040 (1967)).
debtor as if his wages were completely garnished before he received them. This long-standing congressional desire to protect debtors is still emphasized today.\(^5\)

Since courts have brushed aside the broader legislative history and intent and focused more on the statutory construction, it is necessary to consider the validity of their analysis. Simply because Congress did not allude to financial institutions when drafting the wage garnishment statutes does not mean it intended to exclude such institutions. One commentator has noted that "[a] good exemption law . . . is one that is reasonably flexible and . . . adapts itself to changing circumstances."\(^6\) A flexible exemption policy reflects a societal interest to protect the livelihood of the debtor and the debtor’s family, outweighing the interests of the creditor.\(^7\) The statutory language is, in fact, flexible: "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed twenty-five per centum of his disposable earnings for that week . . . ."\(^8\) It was impossible for Congress to predict the different possibilities of payment for wages. For example, it is unlikely that Congress could foresee the growing practice of direct deposit payment when the CCPA was drafted.\(^9\)

The desire for a flexible statute is reflected in Congress’ deferral to the states for additional protection. The CCPA specifically leaves states the authority of "prohibiting garnishments or providing for more limited garnishments . . . ."\(^1\) Delegating to

\(^{56}\) Rodgers, supra note 6, at 447 n.96 ("It also must be noted that even with the large number of bankruptcies today, Congress has emphasized tightening up on creditor abuse, rather than the abuse of debtors who are washing away debts.").

\(^{57}\) Taylor, supra note 48, at 468.

\(^{58}\) Id. at 467–68.


\(^{60}\) For suggestions on how Congress should handle the garnishment of funds deposited directly in an individuals account see Law of Elec. Funds Trans. Systems Chapter 18.02 ("[T]he Congressional intent to protect an individual’s earnings or income should be carried out regardless of the mode of payment chosen by that individual . . . . Congress [should] establish an exemption from attachment or garnishment whenever earnings are deposited directly into an individual’s account in [a] depository institution on the basis of a preauthorization agreement . . . . If a deposit account were attached, only funds in excess of the exemption level, if any, could be paid to the creditor. Funds up to the amount of the exemption would remain in the account for the use of the account holder."). See also Household Finance Corp. v. Kinder, 444 N.E.2d 99, 101 (Ohio Misc. 2d 1982) ("To allow the plaintiff to attach the wages in the direct deposit account without first garnishing the employer will leave the defendant in destitute.").

the states the power to further protect the debtor provides the basis for Congress' thinking that additional protection may be necessary. Since wage garnishments occur at the state level, states would be better equipped to handle more quickly the changing circumstances of wage garnishment and debtor protection.

In both the *Dunlop* and *Melby* cases, the courts were quick to dismiss the opinion reports from the Department of Labor. In these opinions, the Department of Labor suggested that the wage garnishment statutes should apply to funds deposited in financial institutions. Courts do not have to follow these opinions, but perhaps the courts dismissed them without enough consideration. Exemption statutes are to be written flexibly and in a way to evolve with the changing times and circumstances. If the intent of Congress was to limit the number of bankruptcies and to write a pro-debtor statute, who better to grasp the evolution of wage garnishment and bankruptcy laws than the Department of Labor? Congress even gave the Department of Labor the power to enforce the federal garnishment laws. Again, by simply dismissing the Department of Labor's recommendations, the courts display a narrow view and acceptance of the societal importance of debtor protection.

On a similar strand, disposable earnings are the earnings remaining after the amounts required by law to be held are deducted from the gross earnings. In other words, disposable earnings are the earnings employees take home. The *Melby* court concluded that wages deposited in a bank account do not constitute disposable earnings as defined in the wage garnishment statute. To justify its reasoning, the *Melby* court cited the U.S. Supreme

62. See *Dunlop* v. First Nat'l Bank of Arizona, 399 F. Supp. 855, 857 (D. Ariz. 1975); *Melby* v. Anderson, 276 N.W.2d 274, 278 (Wis. 1979). Both courts dismissed the opinions on the premise that in certain circumstances, great weight should be given to administrative opinions, but the ultimate interpretation of the statute rests with the court. The courts ruled that in this case, upholding the Department of Labor's interpretation of the statute would be reading intent in the statute that was not originally present.


64. Taylor, *supra* note 48, at 468.

65. See 15 U.S.C. § 1675 (2004) ("The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title."); 15 U.S.C. § 1676 (2004) ("The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.").

Court’s reasoning in *Kokoszaka v. Belford*, where the Court did not include a tax refund as falling under the definition of disposable earnings in the wage garnishment statute. The *Melby* court concluded:

> While it is clear that an income-tax refund is not derived from earnings, it is equally clear it is not earnings in the sense of payroll earnings, which would be available to wage earners on pay day in the absence of a garnishment proceeding.

> It is also clear that bank accounts, although resulting from a deposit of the employee’s payroll check are not “disposable earnings” sought to be protected by the Act . . .

The *Melby* court’s reasoning appears suspect. In the garnishment cases, the issues are not about tax refunds. They are about wage earnings in the disposable form. Protecting wages deposited in a bank account is distinguishable from protecting a tax refund. For example, wage earners do not normally rely on tax refunds when attempting to provide for themselves and their families. However, it appears more common that wage earners would rely and depend on wages deposited in a bank account to support their livelihood. To overlook this distinction fails to take into account the ordinary practice and way of life for most hard-working individuals.

In addition, these earnings in a bank account would be no different from an individual’s earnings that were not deposited in a bank. For example, let us return to the introductory hypothetical with Adam and John. However, assume Adam gets paid $1000 in cash of which twenty-five percent is garnished, so Adam takes home $750 in cash. If Adam takes home $750 in cash, one would say the $750 represents his disposable earnings after the tax and garnishment reduction.

Now assume also that John still receives $1000 by check, none of which is garnished. John’s $1000 check would constitute his disposable earnings. If John takes the $1000 check, deposits the check in his bank, and then immediately withdraws $750 in cash, would the $750 not constitute cash disposable earnings equivalent to that of Adam’s? According to the rule in *Melby*, once John


68. See *Melby*, 276 N.W.2d at 278 (“‘disposable earnings’ as used in secs. 1672 and 1673 did not include a tax refund but were ‘limited to’ periodic payments of compensation and [do] not pertain to every asset that istraceable in some way to compensation.”) (citing *Kokoszaka*, 417 U.S. at 651, 94 S. Ct. at 2436).

69. *Melby*, 276 N.W.2d at 278.
deposits his $1000, his earnings are no longer considered disposable.

What if Adam took his $750 in cash, went home, and put it in the bottom of his drawer for safekeeping? Would Adam’s earnings no longer be considered disposable? Would Adam’s earnings be different from John’s earnings deposited in a bank? Adam simply deposited his earnings in a drawer. It seems unjustified to consider John’s earnings as non-disposable simply because he deposited them in a bank account. As a result of the courts’ rulings, absurdity exists. According to the courts, Congress intended for debtors to not deposit any wages into a bank account, but keep them in drawers instead. If they do deposit wages in a bank, their wages lose their definition as disposable income and become subject to garnishment.

Perhaps in their interpretations, the courts were worried about the following situation. Assume Adam takes his disposable earnings and purchases a motor bike for $750. He later sells the bike for $750 and puts the money in a bank account. Would the $750 now be considered disposable under Articles 1672 and 1673? In this case, there exists a stronger argument that the proceeds from the bike sale would not be accepted as disposable earnings under the wage garnishment statutes. In this example, Adam’s income loses its liquidity when it is used to purchase a bike. The statute is designed to protect the liquid assets that are necessary for the debtor to protect himself and his family’s livelihood. When a debtor gives up or converts his liquid assets, as in the above example where Adam buys a bike, one can assume that the money was not intended to be used for everyday necessities, and thus Adam would no longer be entitled to protection under the garnishment statute. If the liquidity of a debtor’s wages is maintained, as in the form of cash or in a bank account for example, the wage garnishment exemption should apply. Compared to the hypothetical above, John’s earnings, which are deposited in a bank account, remain in their liquid state and thus should be considered disposable and protected under the wage garnishment statutes.

In addition, proponents of Dunlop and Melby might argue that by allowing debtors to claim protection under the wage garnishment statute to protect disposable assets, some debtors might be tempted to abuse this statute and claim that large sums of

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70. It is not within the scope of this paper to fully examine the moment when income no longer becomes disposable. This hypothetical was an attempt to distinguish wages directly deposited in a bank account from deposited money resulting from other means.
savings are saved wages, and are thus entitled to creditor protection. For example, a wealthier person who has built up disposable income might be able to save all his current wages in a bank account and not tap into these saved resources for living expenses. So, if his bank account is $100,000, he could claim that $75,000 is protected, assuming he can prove that the deposits are all from wages.

A counter argument exists, however, that by eliminating the garnishment exemptions to wages in bank accounts, courts have created a greater benefit to the creditors. For instance, if a crafty creditor knows that wages in a bank account are not protected from complete garnishment, the creditor has a perverse incentive not to seek garnishment of wages from the employer but instead to wait until the debtor deposits his wages in a bank account. It is unlikely that Congress intended for creditors to bypass garnishing wages at the employer-employee level and instead attack bank accounts directly.

To solve this issue, there must be a balance between the interest of the creditor and the interest of the debtor. It is plausible that a few wealthy individuals could take advantage of the statute as proposed, but since it appears the majority of debtors are not part of the wealthy class, it seems prudent to err in favor of the poor. Society has a greater interest in protecting the poor and preventing them from becoming an economic burden by allowing them to become economically viable. As a result, garnishment of wages should also be exempt when deposited in a bank account. Moreover, if an individual has $100,000 in a bank account, it is likely he has other assets worth taking, whereas it is unlikely a poorer individual would have such additional luxuries.

Finally, it is necessary to give deference to one persuading argument consistently presented by the courts. Proponents of protecting wages after they have been deposited in bank accounts have argued that courts should follow two other statutes regarding veteran’s benefits and social security payments as precedent. In Porter v. Aetna Casualty Co., the Supreme Court decided that a veteran’s benefits remain exempt from legal process after being deposited in a bank account. Similarly, in Lawrence v. Shaw

71. See Wage Garnishment, supra note 51, at 361.
72. See Sheila Driscoll, Consumer Bankruptcy and Gender, 83 Geo. L.J. 525, 530 (1994) ("[M]ost debtors fall within the lower middle-income class. The debtors were not the poorest of the poor, rather, they were part of the near-poor."); see also Teresa A. Sullivan, As We Forgive Our Debtors 65 (1989); Philip Schuchman, New Jersey Debtors 1922–1932: An Empirical Study, 15 Seton Hall L. Rev. 541, 544 (1985).
73. 370 U.S. 159, 82 S. Ct. 1231 (1962).
and *Philpott v. Essex*, the Supreme Court concluded that the Social Security Act protected social security payments from legal process after they were deposited in bank accounts. The *Dunlop* and *Melby* courts quickly distinguished the interpretations of these statutes as non-applicable.

In *Usery v. First National Bank of Arizona*, a case which follows the *Dunlop* and *Melby* interpretation, the Ninth Circuit compared the language of the Social Security Act and veteran's benefits statute to the wage garnishment statute. The court found that when compared to the wage garnishment statute, the language of the social security and veteran's benefit statutes was broader in nature and specifically protected those benefits when deposited in a bank account. The court reasoned: "If Congress had meant to restrict creditors' access to wages even after they left the control of the employer, it seems anomalous that it did not provide for protection from attachment of such monies while in the hands of the employee, as they did in the case of social security benefits."

It is unknown why Congress did not include similar language in the garnishment statute. There is nothing in the legislative history that sheds light on this particular matter. Instead of spending time hypothesizing the many possible reasons why Congress wrote the statute the way it did, it would be better to ask whether the courts' rulings are consistent with Congress' overall intent of the statute.

If one steps back and examines how the courts' decisions affect the garnishment statute, one might easily find that the courts' interpretation of the statute contravenes the intent of the framers of the statute. The courts focus on the legislative intent to protect wages and the garnishment process, but they ignore the

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74. 300 U.S. 245, 57 S. Ct. 443 (1937).
75. 409 U.S. 413, 93 S. Ct. 590 (1973).
76. See Dunlop v. First Nat'l Bank of Arizona, 399 F. Supp. 855, 857 (D. Ariz. 1975) (court distinguishes garnishment statute from the social security statute in *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S. Ct. 590 (1973), deciding that the welfare statute, 42 U.S.C. § 407, protects a given fund where the garnishment statute regulates a garnishment process and not a given fund); Melby v. Anderson, 276 N.W.2d 274, 279 (Wis. 1979) (concluding that the benefits set out in the social security and veteran's benefits statutes were to be given broader protection than earnings protected under the garnishment statute).
77. 586 F.2d 107 (9th Cir. 1978).
78. Id. at 110-11.
79. See id. at 111.
80. Id.
overarching intent to protect the debtors.\textsuperscript{81} Significant public policy reasons exist that should compel Congress to protect the debtors' wages after it leaves the hands of the employer. Based on the courts' interpretations of the statute, Congress intended courts to exempt wages while in the hands of the employer, but subsequently allow complete garnishment of wages when the debtor takes them into his possession. This scenario leads to absurd results. It seems anomalous that Congress would intend to provide debtor protection at one stage but then allow creditors to circumvent this protection at another.

Moreover, as previously discussed, and as accepted by every court, one of the main reasons behind the enactment of the garnishment statute was to stop the consistent increase in bankruptcies. If wages are completely garnished after a debtor deposits them in a bank account, one main recourse for the debtor to protect his interest and livelihood is to file for bankruptcy. The courts' rulings lead to the exact result Congress set out to prevent in the construction of the CCPA. In their rulings, courts have ignored this logical result and have defied Congress' intent to lower the number of bankruptcies. It appears that the courts were quick to limit the scope of the statute without fully considering the results of their interpretations.

\textbf{D. Suggestions to Congress}

The courts' interpretations of the federal wage garnishment statute are too narrow and ignore the larger issues of protecting the debtor and his livelihood. Congress must clarify this issue by amending the statute. It can accomplish this task by adding language to 15 U.S.C. § 1673 similar to that in the social security or veteran's benefits statutes. Alternatively, Congress can simply add a provision which allows continuation of the exemption after wages leave the employer's hands.

For example, an amended 15 U.S.C. § 1673 could read as follows:\textsuperscript{82}

\begin{quote}
(a) Maximum allowable garnishment
Except as provided in subsection (b) (d) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not
\end{quote}

\textsuperscript{81} See discussion on Congressional intent \textit{supra} Part I.C.

\textsuperscript{82} The underlined portion represents added language and the strikeout portion represents language that was removed from the existing statute.
exceed
(1) 25 per centum of his disposable earnings for that week,
or
(2) the amount by which his disposable earnings for that
week exceed thirty times the Federal minimum hourly
wage prescribed by section 206(a)(1) of Title 29 in effect at
the time the earnings are payable, whichever is less. In the
case of earnings for any pay period other than a week, the
Secretary of Labor shall by regulation prescribe a multiple
of the Federal minimum hourly wage equivalent in effect to
that set forth in paragraph (2).
(b) Disposable earnings not subject to garnishment as
provided in subsection (a) shall not lose their exempt status
when paid from the employer to the employee by cash,
check, direct deposit, or other payment means.
(c) The exemption outlined in subsection (b) shall be lost
when disposable earnings resulting from wages are
converted into illiquid assets not otherwise exempt.
(d) Exceptions . . .

It is unfortunate that clarification has not come sooner, but with
the advent and growing use of electronic direct deposits of wages
in bank accounts, it perhaps now is the perfect time to clarify the
statute before the courts erode Congress' original intent.

II. THE LOUISIANA STATUTE: EXEMPTIONS FROM THE
GARNISHMENT OF WAGES

Louisiana state courts have yet to confront the issue dealt with
in the Dunlop and Melby decisions. If and when the issue does

83. Though this is outside the scope of this article, for suggestions on how
Congress should handle the garnishment of funds deposited directly in an
individual's account see discussion supra note 60. See also In re Sinclair, 2005
WL 1669012 (5th Cir. 2005) (addressing the issue of garnishment of a salary
directly-deposited into a worker's banking account).
84. See In re Sinclair, 2005 WL 1669012. While this article was in the
production process, the United States Fifth Circuit Court of Appeals ruled that
Louisiana's garnishment exemption statute, La. R.S. 13:3881, does not protect
funds deposited in bank accounts. In this case, Sinclair argued that his wages
placed in his bank account by direct-deposit should be protected under the
Louisiana statute. The bankruptcy court originally found that the wages should
be exempt, but the district court, and ultimately the appellate court, disagreed.
In its decision, the Fifth Circuit found that the broad opening language of the
statute was modified and narrowly construed by the statute's definition of
disposable earnings. Id. at 3.
arise, Louisiana courts will have to examine two principles. First, the courts must determine whether the Louisiana statute on wage garnishment exemption differs from the federal statute. Second, if the state statute does differ, the courts must analyze whether the statutory history of the Louisiana statute offers greater protection to Louisiana debtors.

A. Case Analysis from Other States

Despite the holdings by some courts ruling that Congress did not intend to protect wages after they were deposited in a financial institution, other courts have decided that allowing creditors to pursue earnings in the hands of the debtor affords the debtor less protection than he would have under a wage exemption statute that extended protection to a defined fund of wages. Since the garnishment statutes under the CCPA were derived from state statutes, it is prudent to address how some states would examine this question. In particular, two cases examine the issue of wage garnishment from bank accounts in a different light: *Miller v. Monrean* and *Midamerica Savings Bank v. Miehe.*

1. Miller v. Monrean

As will be discussed in this Section, a broader interpretation should be made in interpreting this statute. The appellate court appears to assume that the scope and intent of the statute is clear. However, as this article points out, the statute is not clear, and as a result, under the rules of statutory interpretation, the court should have examined the statutory history and legislative intent. The appellate court's ruling follows a line of federal court rulings which narrowly interprets garnishment exemption statutes without fully examining the legislative intent behind the statutes. *In re Sinclair* should nonetheless highlight the contemporary importance of this article and the current need to address the wage garnishment exemptions in Louisiana.


86. See, e.g., In re Kobernusz, 160 B.R. 844, 848 (D. Colo. 1993) ("To follow the logic of Plaintiff, money received from an employer, even if exempt at time of payment, would lose such exemption when placed into a wallet. Such a result would be absurd and improper."); Midamerica Savings Bank v. Miehe, 438 N.W.2d 837, 839 (Iowa 1989).
In *Miller v. Monrean*, The Alaska Supreme Court held that funds exempt by state statute do not lose their exempt status when deposited in a debtor's bank account. A paycheck of $423.21 was deposited in Miller's checking account. Between the date of deposit and the date of the levy of execution, the Millers used all but $260.68 to pay for living expenses. This remaining balance was thus subject to levy by creditors. The Millers claimed that under the Alaskan statute, $350 of the $423.21 was subject to exemption and, thus, only $73.21 would be subject to levy. As a result, Miller asked that $187.47 ($260.68 of the remaining balance minus the $73.21 that was not exempt) be returned to him as an exempt amount.

The district court and state appellate court denied Miller's claim for exemption. The Alaska Supreme Court reversed the lower courts' rulings. The appellees in this case argued that the Alaskan statute was similar to the federal statute, 15 U.S.C. §§ 1671–1677, in that it contains no language that would allow exemption of income after a debtor received and deposited his income in a checking account. The Alaska Supreme Court stated that the purpose of the federal statute was not to protect the earnings of the debtor, but instead to make garnishment a less attractive means for a creditor to get repaid. In support of this, the court only cites the language of 15 U.S.C. § 1671. The court

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88. Id. at 772.
89. Id.
90. Id. In its decision the court examined the former Alaskan statutes § 09.35.080(1) which read as follows:

The following property is exempt from execution, except as otherwise specifically provided when selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon after levy and before sale as the existence of the levy becomes known to him: (1) the income of the judgment debtor, regardless of when it became payable, for work performed during the preceding 30 days, or otherwise earned or inured to his benefit within the 30-day period; the 30-day period shall be reckoned back from the date of the levy, but the exemption may not exceed $350 if he is the head of a family, and the amount of $200 if he is not the head of a family; the amount of the exemption shall be computed after deductions and payments, required by law or court order, so as to assure the judgment debtor the receipt of the first $350 per month if he is the head of a family or $200 if he is not the head of a family, when it appears by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family which is supported in whole or in part by his income . . . .

91. Id. at 773.
92. Id. at 774.
93. Id. at 774 n.5. Congress set forth its findings in 15 U.S.C. § 1671 in part as follows:
found it unnecessary to compare the two statutes because it found that the Alaskan statute specifically stated the exemption for heads of households, and thus, the purpose of the statute was to protect the debtor's income after it was received to meet his family needs. The court wrote, "it would be anomalous to limit the protection of AS 09.35.080(1) to income in the hands of the employer."  

2. Midamerica Savings Bank v. Miehe  

In *Midamerica Savings Bank v. Miehe*, the Iowa Supreme Court also addressed the issue of whether funds lose their exempt status when deposited in a bank account. The bank account of Miehe was garnished by Midamerica Bank as a result of mortgage indebtedness. Miehe claimed that the funds in the bank account consisted of personal earnings exempted under the Iowa Code section 642.21. Reversing the judgment for the creditor, the Iowa Supreme Court ruled: "If wages intended by law to be exempt from creditors' claims are only accorded that status in the hands of the debtor's employer, the protection can be rendered meaningless by creditors levying on the funds in the hands of the

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(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditor's remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

94. *Id.* at 774.
95. *Id.* at 775.
96. 438 N.W.2d 837 (Iowa 1989).
97. Iowa Code § 642.21 (1987). Exemption from net earnings:

1. The disposable earnings of an individual are exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act, Title III, 15 U.S.C. secs. 1671–1677 (1982). The maximum amount of an employee's earnings which may be garnished during any one calendar year is two hundred fifty dollars for each judgment creditor, except as provided in chapter 252D and sections 598.22, 598.23, and 627.12, or when those earnings are reasonably expected to be in excess of twelve thousand dollars for that calendar year as determined from the answers taken by the sheriff or by the court pursuant to section 642.5, subsection 4.
debtor or on the debtor's bank account." The Iowa court circumvented the federal statute concluding that the Iowa Legislature adopted parts of the federal law "for some, but certainly not all, purposes to protect wage earners from creditors levying on their wages." Upon examining the statutory history, it found that the rationale to protect the debtor's funds deposited in a bank account that existed in Iowa in the 1930's still existed at the time of the current case. Thus, the court read the Iowa statute as granting additional protections to wage earners not granted by the federal law. The court did add an additional caveat to the debtor's attempt to declare garnishment protection. The court reasoned that "[b]ecause the purpose of allowing wages to retain their exempt character is to facilitate payment of ordinary living expenses, the continuation of exempt status is conditioned upon tracing the deposits from wages received within a ninety-day period preceding the levy." Despite the fact that the Iowa statute incorporated language from the federal wage garnishment statute, the court concluded that wages deposited in bank accounts should be exempted from seizure by creditors.

B. The Louisiana Statute

To understand this issue in Louisiana, it is first necessary to examine the Louisiana statute and compare it to the federal statute. If the two statutes were similar, it would be more difficult for a debtor to claim an exemption based on the federal courts' interpretation of the statute. However, if the statutes were different, a debtor might argue that, like in the states of Alaska and Iowa, Louisiana has extended a greater protection to debtors than the federal statutes have, as currently interpreted by the courts.

1. Comparing the Language of the Louisiana Exemption Statute to the Language of the Federal Statute

At first glance, the Louisiana statute appears similar to the federal statute. Like the federal statute, the Louisiana statute

98. Midamerica, 438 N.W.2d at 839; see also General Motors Acceptance Corp. v. Falcone, 327 A.2d 699, 701 (N.J. 1974); Daugherty v. Central Trust Co., 504 N.E.2d 1100, 1103 (Ohio 1986); Benson v. Richardson, 537 N.W.2d 748 (Iowa 1995); In re Kobemusz, 160 B.R. 844, 848 (D. Colo. 1993).
99. Midamerica, 438 N.W.2d at 838.
100. See Id. at 839.
101. Id. at 839–40.
102. Louisiana Revised Statutes 13:3881 (2004) and the pertinent language provides:
exempts the same percentage of wages from garnishment, seventy-five percent. However, the language of Louisiana Revised Statutes 13:3881 is in fact different from that of the federal statute, 15 U.S.C. § 1673. From a textual standpoint, it appears that Louisiana Revised Statutes 13:3881 goes further in its protection of the debtor. The language, "exempt from seizure under any writ, mandate, or process whatsoever" appears to extend protection beyond the employer-employee. In fact, this wording is similar to the wording used in the federal Social Security and veteran’s benefit acts. The Social Security Act contains the language, "[N]one of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process ...." Similarly, veteran’s benefits are those benefits that "shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." In both cases, courts have used this language to extend protection to amounts deposited in bank accounts, and in cases where courts have rejected the notion exempting wages when deposited in bank accounts, the courts have still upheld the social security and veteran’s benefit exemptions. As a result of this phraseology,

A. The following income or property of a debtor is exempt from seizure under any writ, mandate, or process whatsoever except as otherwise herein provided:

(1)(a) Seventy-five percent of his disposable earnings for any week, but in no case shall this exemption be less than an amount in disposable earnings which is equal to thirty times the federal minimum hourly wage in effect at the time the earnings are payable or a multiple or fraction thereof, according to whether the employee’s pay period is greater or less than one week . . . .

(b) The term “disposable earnings” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and which amounts are reasonable and are being deducted in the usual course of business at the time the garnishment is served upon the employer . . . .

the Louisiana statute provides greater protection for debtors than the federal statute.

2. A Brief History of the Louisiana Exemption Statute

The legislative language of wage garnishment has been longstanding and relatively unchanged in Louisiana. The legislature decided well before the passage of the Federal CCPA that income of a debtor would be exempt from garnishment "under any writ, mandate, or process whatsoever . . . ." After the passage of the federal statute, Louisiana aligned itself only with the percentages of the federal statute, changing the exemption from eighty percent to seventy-five percent. The pertinent language of Louisiana Revised Statutes 13:3881 and percentage of wage exemption exist unchanged today.

3. The Legislative Intent and Interpretation of the Louisiana Exemption Statute

Louisiana case law has clearly laid out the longstanding purpose of the exemption statute. The purpose of Louisiana Revised Statutes 13:3881 is "to provide for the subsistence, welfare, and 'fresh start' for debtor, to [the] end that his or her family will not be destitute and to [the] end that [the] debtor will not become [a] charge of the state." The idea of exemption statutes stems from the desire to protect the debtor and also from the policy of protecting the necessities of life. For example, "The notion of exempt property is founded on an idea of humaneness; the law declares to be exempt those items which are necessary to the life of the debtor; to take them from him would be to expose him to death by starvation." In deciding whether the purpose of the statute should be construed to protect debtors' wages after they have been deposited in a bank account, one must

107. See 1960 La. Acts No. 32, § 6 (Article 644 was repealed and its subject matter was incorporated into the new La. R.S. 13:3881. The language "under any writ, mandate, or process" was carried over into the new Act.)
112. M. Plainol, Traite Elementaire De Droit Civil No. 184 (1912) (as translated and cited in Ferriot, supra note 111, at 86).
also consider that exemption statutes in Louisiana are to be interpreted broadly and liberally so that the obvious purpose of the statutes is not frustrated.\textsuperscript{113}

In extending the exemption coverage to wages in bank accounts, Louisiana courts would not appear to frustrate the intention of the statute. This extension not only continues to protect debtors, but it also provides the debtors with disposable income to support their families. Moreover, if the purpose of the exemption statute in Louisiana is to protect debtors, then garnishing all wages after they are deposited in a bank account would appear to completely frustrate the legislative intent. The intended exemption would be dramatically decreased, if not eliminated.

There is at least one possible argument a creditor might raise against extending the wage exemption to bank accounts. It has been held that because Louisiana exemption statutes are in "derogation of the general rule of non-exemption, they should be construed as written, with no exemptions being added to embrace a generalized notion of public policy or deleted in favor of the general rule of non-exemption."\textsuperscript{114} So, it must be asked, does extending this rule to cover bank accounts add to the exemption statute and counter the written rule? The language of the statute is clear—seventy-five percent of a debtor's income is exempt from seizure under any writ, mandate, or process whatsoever.\textsuperscript{115} Garnishing all wages out of a bank account would appear to be another mandate or process that the statute specifically prevents. This broad prevention is important in that it appears that the legislature specifically wanted to protect such wages. This not only follows the theme of protecting the debtor, but it also incorporates the principle that exemption statutes must be written flexibly enough to evolve over time. By extending the wage exemption to a bank account, courts would not be defying the written rule, but they would be continuing to enforce Louisiana's overarching debtor protection policy.

C. Suggestions to the Louisiana Legislature

The Louisiana statute is different and broader than the federal statute. As a result, Louisiana courts should follow the similar conclusions reached by the supreme courts in Alaska and Iowa and extend the wage exemption protection to wages deposited in bank

\textsuperscript{113} In re Ballard, 238 B.R. 610, 635 (Bankr. M.D. La. 1999).
\textsuperscript{114} Id. at 635.
accounts. This ruling would not go beyond the intent of the legislature and the statute, but, instead, would reaffirm Louisiana's commitment to aiding the debtor.

However, it might be more prudent for the Louisiana Legislature to amend the statute now. First, since courts are unpredictable and may decide to follow the federal interpretation, this preemptive amendment would prevent having to amend the statute in the future. Second, and perhaps more importantly, in amending the statute, the legislature would send a clear message of legislative intent to creditors. It would not be a stretch to assume that some creditors might be taking advantage of this unsettled issue in Louisiana. A crafty creditor would attempt to levy anything and everything, making bank accounts fair game. In addition, since the majority of debtors live below the middle class, it seems likely that they cannot afford the expense of challenging creditors and this issue in higher courts. Perhaps this is why the issue has not yet been discussed in Louisiana courts. Nevertheless, by amending the statute now, the legislature would provide debtor lawyers with better clarity and ammunition to protect the debtor's interest and livelihood. The statute could be amended with similar language that was suggested for the federal statute in Section I-D of this article. For example the Louisiana Legislature could add the following subsection:

1(c) The exemption of disposable earnings proscribed in subsection (a) shall not be lost when disposable earnings are paid from the employer to the employee by cash, check, direct deposit, or other payment means except when the disposable earnings are converted in the purchase of illiquid assets not otherwise exempt.

CONCLUSION

Federal and state courts differ on whether wages should be exempt from complete garnishment when deposited in financial institutions. Though some might undervalue the importance of this issue, the livelihoods of all debtors and their respective families could hang in the balance.

The advent of federal wage garnishment restrictions resulted from increasing bankruptcies among American debtors. In an effort to curb this outbreak, Congress believed that restricting the then unrestricted state garnishment laws to at least a seventy-five percent exemption of wages from garnishment would help alleviate the growing number of bankruptcies. However, the federal statutes
are unclear as to whether the seventy-five percent exemption should extend to wages deposited in bank accounts.

The courts in *Dunlop v. First National Bank of Arizona* and *Melby v. Anderson* concluded that wages lose their exemption when deposited in bank accounts. The courts reasoned that the intent of the statute was to protect the employer-employee relationship and thus the garnishment exemption ceased after the wages went into the possession of the employee. The courts examined only half of the picture. While it is true that one goal of the garnishment statutes was to protect employees from losing their jobs, there exists a second and equally important concept that the garnishment statutes were developed to protect the livelihood of the debtor and his family. This congressional intent can be found in the legislative history and construed from the large exemption granted in the statute’s language. These courts have ignored this aspect and taken a narrow view when interpreting the federal garnishment statute. The courts have abrogated the congressional intent and the pertinent public policy considerations behind protecting wages from complete garnishment. As a result, Congress should quickly amend the federal statute to protect debtors before courts provide creditors with even greater access to debtors’ livelihoods.

Regardless of whether Congress tackles this important task, the Louisiana Legislature should act on its own volition and protect its debtors. Congress has provided all states with the opportunity to protect debtors beyond the parameters laid out in the federal statute. Some state supreme courts have examined state statutes and found that the legislative intent behind the respective statutes provides for greater protection to the debtor and his family than that offered by the federal statute. In Louisiana, the legislative history and intent behind the Louisiana wage garnishment statute clearly provide for greater protection. The Louisiana statute is written in broader language than the federal statute. It contains the same protective intent as the states whose courts have extended wage exemption to bank accounts. The purpose behind the statute has been held by courts to protect the debtor and the debtor’s family. Based on this long-standing history and purpose, it would be futile for Louisiana to provide debtors with a wage garnishment exemption and then quickly remove this exemption should its debtors deposit wages in a bank account. The legislature could leave the statute untouched and allow unpredictable state courts to muddy the issue. The better solution is to amend the statute now.

Louisiana’s livelihood depends on the livelihood of its citizens. A debtor and his family’s livelihood are no less important. By protecting wages deposited in bank accounts, the Louisiana
Legislature would continue the state's longstanding policy of protecting the debtor. Louisiana would not leave its citizens, like Adam and John, asking the question, "where is the exemption?" Unlike the federal courts, Louisiana would provide a clear answer—in the debtor's favor.

G. Wogan Bernard*